

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

CHARLES MCALLISTER,

Movant,

v.

UNITED STATES OF AMERICA,

Respondent.

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CAUSE NO. A-22-CV-225-LY

[A-18-CR-16-LY]

**GOVERNMENT’S MOTION FOR A COURT ORDER PERMITTING THE
DISCLOSURE BY DEFENSE COUNSEL OF CONFIDENTIAL CLIENT
INFORMATION REASONABLY NECESSARY TO REFUTE AN INEFFECTIVE
ASSISTANCE OF COUNSEL CLAIM AND ADDITIONAL TIME**

The United States of America, by and through the undersigned Assistant United States Attorney, moves the Court to enter an order permitting defense counsel to disclose confidential information which is reasonably necessary to refute the ineffective assistance of counsel claims raised by Charles McAllister in his Motion to Vacate, Set Aside, or Correct Sentence pursuant to 28 U.S.C. § 2255 filed on March 10, 2022. In support of this motion, the United States would show that on January 18, 2018, McAllister was charged in a three-count indictment with two counts of wire fraud and one count of money laundering. McAllister was found guilty on all counts by a jury on October 4, 2019. He was sentenced by the Court on December 19, 2019, to a 120-month term of imprisonment, followed by a three-year term of supervised release, and to pay a \$300 mandatory assessment fee. McAllister filed an appeal that was denied by the Fifth Circuit on February 2, 2021. 844 Fed.Appx. 696.

McAllister alleged in his motion, among other things, that his counsel provided ineffective assistance of counsel by: (1) failure by defense counsel to investigate and perform pretrial

functions; (2) failure to hire an expert witness; (3) failure to call witnesses; (4) failure to impeach government witnesses; (5) failure to call McAllister to testify on his own behalf; and (6) failure to attack the loss amount at sentencing.

In order to properly address the allegations by McAllister, the United States has requested that defense counsel, Jimmy Ardoin, review the ineffective assistance of counsel claims and provide the government with a sworn affidavit addressing those claims. Mr. Ardoin has requested that the Court issue an order permitting him to disclose relevant confidential client information reasonably necessary to respond to the defendant's ineffective assistance of counsel claims. In the interest of justice and judicial economy, the United States moves this Court to enter an order which finds that in filing the motion to vacate, set aside or correct sentence, McAllister waived the attorney-client privilege relevant to his allegation that his attorney provided ineffective assistance of counsel as described above.

Further, the United States moves this Court to enter an order which permits defense counsel Jimmy Ardoin to disclose otherwise confidential attorney-client communications to the United States which defense counsel deems reasonably necessary to defend himself against the ineffective assistance of counsel claims raised in the motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255. The government further requests that the order include giving Mr. Ardoin access to any and all documents related to McAllister maintained by the firm Jones Walker. Such disclosure would include providing relevant documents to the United States, providing a responsive affidavit for filing with the Court, and testimony at any hearing related to the motion to vacate, set aside or correct sentence pursuant to 28 U.S.C. § 2255.

The United States further requests that the Court extend by 90 days a response to the motion filed by McAllister. This will allow Mr. Ardoin sufficient time to collect any documents he deems necessary to respond to the allegations in the motion.

Respectfully submitted,

ASHELY C. HOFF
United States Attorney

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CERTIFICATE OF SERVICE

I hereby certify that on April 26, 2022, a true and correct copy of the foregoing instrument was electronically filed with the Clerk of the Court using the CM/ECF System.

I also hereby certify that a true and correct copy of the foregoing instrument was mailed via United States mail to the following non-CM/ECF participant:

Charles McAllister
No. 00222480
Montgomery FPC
Montgomery, AL 36112

s/ Daniel D. Guess
DANIEL D. GUESS
Assistant United States Attorney